

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ANIBAL ESTEBAN JAVIER PEREZ,

NOTICE OF MOTION

Plaintiff,

-against-

07 Civ. 4063 (CLB)

TOWN OF BEDFORD, TOWN/VILLAGE OF MOUNT
KISCO, and GEORGE BUBARIS, Individually,

Defendants.

-----X

PLEASE TAKE NOTICE that, upon the accompanying Declaration of James A. Randazzo and the exhibits annexed thereto; Memorandum of Law in Support of Defendant's Motion to Dismiss and upon all pleadings and proceedings heretofore had herein, the defendant, Town/Village of Mount Kisco, by its attorneys, Santangelo Randazzo & Mangone LLP, will move this Court before the Honorable Charles L. Brieant, United States District Judge, in the United States District Court for the Southern District of New York, located at the U.S. Courthouse, 300 Quarropas Street, Room 218, White Plains, New York, 10601, on September 21, 2007 at 10:00 a.m. for an Order pursuant to Fed. R. Civ. P. 12 (c), dismissing this action in

its entirety, and for such other and further relief as this Court deems just and proper.

Dated: Hawthorne, New York
September 12, 2007

Respectfully submitted,

SANTANGELO RANDAZZO & MANGONE LLP

By: 

James A. Randazzo(0156)
Attorneys for Defendant-Town/Village of
Mount Kisco
151 Broadway
Hawthorne, New York 10532
(914) 741-2929

TO: LOVETT & GOULD, LLP
Attorneys for Plaintiff
222 Bloomingdale Road
White Plains, New York 10605
(914) 428-8401

MIRANDA SOKOLOFF SAMBURSKY SLONE VERVENIOTIS, LLP
Attorneys for Defendant- Town of Bedford
The Esposito Building
240 Mineola Boulevard
Mineola, New York 11501
(516) 741-7676

RUTHERFORD & CHRISTIE, LLP
Attorney for Defendant- George Bubaris
300 East 42nd Street
New York, New York 10017
(212) 599-5799

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANIBAL ESTEBAN JAVIER PEREZ,

**DECLARATION OF
JAMES A. RANDAZZO**

Plaintiff,

-against-

07 Civ. 4063 (CLB)

TOWN OF BEDFORD, TOWN/VILLAGE OF MOUNT
KISCO, and GEORGE BUBARIS, Individually,

Defendants.
-----X

JAMES A. RANDAZZO, an attorney duly admitted to practice law in the
Southern District of New York hereby affirms the following under the penalties of perjury:

1. I am in partner in the law firm of Santangelo Randazzo & Mangone LLP,
attorneys of record for defendant Town/Village of Mount Kisco ("Mt. Kisco").
2. I submit this declaration in support of defendant Mount Kisco's motion to
dismiss this action pursuant to Fed. R. Civ. P. 12(c).
3. Annexed hereto as Exhibit "A" is a copy of plaintiff's complaint in this
action.
4. Annexed hereto as Exhibit "B" is a copy of defendant Mount Kisco's
answer in this action.

5. For the reasons set forth in the accompanying memorandum of law, defendant Town/Village of Mount Kisco respectfully submits that its motion to dismiss should be granted and the claims against the Town/Village of Mount Kisco be dismissed in their entirety.

Dated: Hawthorne, New York
September 12, 2007

YOURS, etc.,

SANTANGELO RANDAZZO & MANGONE LLP

By: 

James A. Randazzo (0516)
Attorneys for Defendant-Town/Village of
Mount Kisco
151 Broadway
Hawthorne, New York 10532
(914) 741-2929

TO: LOVETT & GOULD, LLP
Attorneys for Plaintiff
222 Bloomingdale Road
White Plains, New York 10605
(914) 428-8401

MIRANDA SOKOLOFF SAMBURSKY SLONE VERVENIOTIS, LLP
Attorneys for Defendant- Town of Bedford
The Esposito Building
240 Mineola Boulevard
Mineola, New York 11501
(516) 741-7676

RUTHERFORD & CHRISTIE, LLP
Attorney for Defendant- George Bubaris
300 East 42nd Street
New York, New York 10017
(212) 599-5799

EXHIBIT “A”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ANIBAL ESTEBAN JAVIER PEREZ,

Plaintiff,

-against-

07 Civ. 4063 (CLB)

TOWN OF BEDFORD, TOWN/VILLAGE OF MOUNT
KISCO, and GEORGE BUBARIS, Individually,

Defendants.

-----X

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT
TOWN/VILLAGE OF MOUNT KISCO'S MOTION TO DISMISS**

SANTANGELO RANDAZZO & MANGONE LLP
Attorneys for Defendant-Town/Village of
Mount Kisco
151 Broadway
Hawthorne, New York 10532
(914) 741-2929

Of Counsel:
James A. Randazzo (0516)

PRELIMINARY STATEMENT

Plaintiff Anibal Esteban Javier Perez brings this action against the Town of Bedford ["Bedford"], the Town/Village of Mount Kisco ["Mount Kisco"], and Police Officer George Bubaris, an employee of Mount Kisco, asserting two causes of action for violations of his Fourteenth Amendment rights pursuant to 42 U.S.C. § 1983. Plaintiff's claim arises from the allegation that members of the Mount Kisco Police Department struck his brother and then dumped him on the shoulder of Byram Lake Road. Subsequently, plaintiff's brother died. Mount Kisco now moves to dismiss this action as plaintiff does not have standing to assert a Section 1983 claim against the Town/Village of Mount Kisco.

STATEMENT OF FACTS

Plaintiff alleges in the complaint that Bedford and Mount Kisco have maintained a policy of "border-dumping." (Compl., ¶ 7). He asserts that this practice involves targeting "indigent male Hispanics of Guatemalan national origin, taking them into a police vehicle, transporting them across the border to the other jurisdiction, and leaving or "dumping" them in that jurisdiction. (Compl., ¶ 9).

Plaintiff claims that on April 28, 2007, between 8:30 p.m. and 8:43 p.m., Bedford police officers picked up plaintiff's brother, Rene Perez, in their police car and transported him to Mount Kisco (Compl., ¶ 9).

Plaintiff further claims that, between 11:10 p.m. and 11:35 p.m., Mount Kisco police officers (including defendant Bubaris) separately encountered Rene Perez, struck him in the abdominal area, took him into custody, transported him to a desolate area in Bedford and left him on the shoulder of Byram Lake Road. (Compl., ¶ 11). Plaintiff claims that although Rene

Perez was seriously injured as a result of the blow to the abdomen by Mount Kisco police officers and in dire need of emergency medical attention, they left him by the road. (Compl., ¶ 11). Shortly afterwards, he was discovered by local passers-by, and was removed to a local hospital where he died from injuries allegedly caused by the Mount Kisco police officers. (Compl., ¶ 12).

Plaintiff claims that he has been forced to suffer “the loss of his biological brother, emotional upset, anxiety, fear, and has otherwise been rendered sick and sore.” (Compl., ¶ 13). As a result, plaintiff has asserted two causes of action against Mount Kisco, both alleging a violation of plaintiff’s Fourteenth Amendment rights. Significantly, the estate of Rene Perez is not a plaintiff in this action.

STANDARD OF REVIEW

A motion to dismiss should be granted if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

ARGUMENT

POINT I

PLAINTIFF DOES NOT HAVE STANDING TO MAINTAIN A CLAIM AGAINST THE TOWN/VILLAGE OF MOUNT KISCO

To prevail in an action under 42 U.S.C. § 1983, a plaintiff must show that he was deprived of a right, privilege, or immunity secured by the Constitution or laws of the United States. 42 U.S.C. § 1983; *Thomas v. Roach*, 165 F. 3d 137, 142 (2nd Cir. 1999). It is axiomatic that a party does not have standing to assert the rights of others who are not parties to the action

County Court of Ulster v. Allen, 442 U.S. 140, 154-63, 99 S.Ct. 2213 (1969), including claims on behalf of family members. Kelly v. Rockefeller, 69 Fed. Appx. 414 (10th Cir. 2003); Idemudia v. Consolidated Rail Corp., 36 Fed. Appx. 558 (6th Cir. 2002); Morgan v. City of New York, 166 F. Supp. 2d 817 (S.D.N.Y. 2001). Based upon the foregoing, it is clear that to the extent plaintiff seeks to recover for the alleged violation of his brother's civil rights, he lacks standing to assert such claims.

Moreover, plaintiff has similarly failed to state a claim that his Fourteenth Amendment rights have been violated because defendants allegedly caused his brother's death and thus have violated his constitutional right to "familial association" or "familial privacy". See generally, Patel v. Searles, 305 F.3d 130 (2nd Cir. 2002). Although such a right is recognized, most Circuits Courts have declined to find a violation of the familial liberty interest where, as here, the state action at issue was not aimed specifically at interfering with the relationship. Russ v. Watts, 414 F.3d 783, 787 (7th Cir. 2005). Here, there are absolutely no allegations that the defendants took any actions that were intentionally directed to interfere with the plaintiff's familial relationship with the decedent. To be sure, to the extent such a claim is recognized by the courts, it is between parents and their children in a "custodial relationship", not between siblings, as is the case here.

In fact, similar claims have already been addressed by the Eastern District of New York in two cases, Pizzuto v. County of Nassau, 240 F. Supp. 2d 203 (E.D.N.Y. 2002) and Busch v. City of New York, 2003 WL 22171896 (E.D.N.Y. Sept. 11, 2003). Both cases involved suits brought for the intentional wrongful deaths of family members at the hands of police or correction officers. Both courts found that the parents of the adult decedents had no claim for

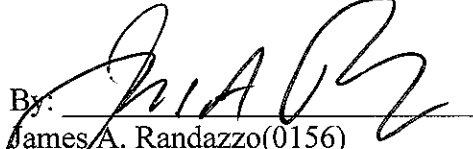
denial of a familial relationship. Both cases expressly rejected the application of Patel to situations in which the decedent was an adult and in which there was no direct attempt by the defendants to interfere with the familial relationship. Plaintiff's claim herein should be for the same reasons set forth in Pizzuto and Busch.

CONCLUSION

For the foregoing reasons, defendant respectfully submits that this action be dismissed in its entirety, together with such further relief as it deems just and proper.

Dated: Hawthorne, New York
September 12, 2007

Respectfully submitted,
SANTANGELO RANDAZZO & MANGONE LLP

By: 

James A. Randazzo(0156)
Attorneys for Defendant-Town/Village of
Mount Kisco
151 Broadway
Hawthorne, New York 10532
(914) 741-2929

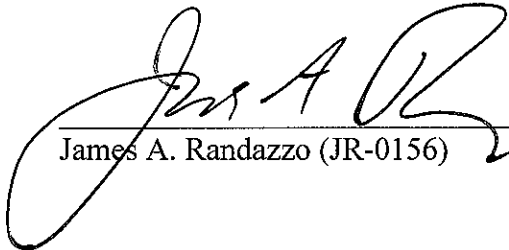
CERTIFICATE OF SERVICE

I, JAMES A. RANDAZZO, hereby certify that on September 12, 2007, I served the within NOTICE OF MOTION, DECLARATION & MEMORANDUM OF LAW upon all parties, by mailing a copy thereof, postage prepaid, the address as provided to defendant by notification from this Court and by electronic filing:

LOVETT & GOULD, LLP
Attorneys for Plaintiff
222 Bloomingdale Road
White Plains, New York 10605
(914) 428-8401

MIRANDA SOKOLOFF SAMBURSKY SLONE VERVENIOTIS, LLP
Attorneys for Defendant- Town of Bedford
The Esposito Building
240 Mineola Boulevard
Mineola, New York 11501
(516) 741-7676

RUTHERFORD & CHRISTIE, LLP
Attorney for Defendant- George Bubaris
300 East 42nd Street
New York, New York 10017
(212) 599-5799


James A. Randazzo (JR-0156)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANIBAL ESTEBAN JAVIER PEREZ,

Plaintiff,

-against-

TOWN OF BEDFORD, TOWN/VILLAGE
OF MT. KISCO, and GEORGE BUBARIS,
individually,

Defendants.
-----X

ORIGINAL

07 Civ. ()

COMPLAINT

BRIANT

Jury Trial Demanded

07 CIV. 4063

FILED
U.S. DISTRICT COURT
2007 MAY 21 A 9:35
S.D. OF N.Y. W.P.

Plaintiff ANIBAL ESTEBAN JAVIER PEREZ, by his attorneys Lovett & Gould,

LLP, for his complaint respectfully states:

NATURE OF THE ACTION

1. This is an action for compensatory and punitive damages, proximately resulting from conduct jointly engaged in by Defendants while acting under color of the laws of the State of New York, for the violation of Plaintiff's rights as guaranteed by the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983.

JURISDICTION

2. The Court's jurisdiction is invoked in accordance with 28 U.S.C. §§1331, 1343.

THE PARTIES

3. Plaintiff ANIBAL ESTEBAN JAVIER PEREZ is a domiciliary of the State of New York and a resident of the Northern Counties. He is a biological brother of Rene Perez who was the victim of an April 28, 2007, homicide.

4. Defendant TOWN OF BEDFORD, New York (hereinafter "Bedford") is a municipal corporate subdivision of the State of New York duly existing by reason of and pursuant to the laws of said State. Bedford and the co-defendant Town/Village of Mt. Kisco are contiguous and share a common border.

5. Defendant TOWN/VILLAGE OF MT. KISCO, New York (hereinafter "Mt. Kisco"), is also a municipal corporate subdivision of the State of New York duly existing by reason of and pursuant to the laws of said State.

6. Defendant GEORGE BUBARIS (hereinafter "Bubaris"), who is sued in his individual and personal capacities only, at all times relevant to this complaint was a Police Officer employed by Mt. Kisco. With respect to the events set forth *infra* Bubaris was on duty and in all respects acting under color of the laws of the State of New York. Prior to the events of April 28, 2007, as set forth *infra*, Bubaris had made public his belief that Rene Perez was a "bad" person whom he (Bubaris) did not like.

THE FACTS

7. Bedford and Mt. Kisco have for a substantial period of time established and maintained a practice, policy and custom quaintly referred to in police parlance as "border dumping".

8. Border dumping, as routinely practiced by Bedford and Mt. Kisco by means of its police officers, intentionally targets indigent male Hispanics of Guatemalan national origin (hereinafter the "target") who members of the police departments in both jurisdictions believe should not be permitted to enter into and/or remain within their respective municipalities.

9. As routinely applied by the police in both jurisdictions, officers assigned to patrol duties:

- a. Select a target with respect to whom they have developed, by reason of prior interactions, personal animus motivated in whole and/or substantial respect by reason of the target's: national origin; skin color; and/or ethnicity,
- b. Involuntarily take the target into police custody without lawful cause, much less probable cause,
- c. Force the target to enter into and remain within a police vehicle,
- d. Without authority or permission of the target, transport the target across the border,
- e. Dump the target and/or his body in the neighboring jurisdiction, and
- f. Return to their own jurisdiction without officially reporting their conduct.

10. On April 28, 2007, between 8:30 P.M. and 8:43 P.M. sworn members of the Bedford Police Department targeted Rene Perez, involuntarily took him into their custody, forced him into a police vehicle, without authority or permission transported him out of Bedford and dumped him at or about Route 117 and Main Street in Mt. Kisco. In

doing so those Police Officers were motivated by animus premised upon the target's national origin, skin color, and/or ethnicity.

11. On April 28, 2007, between 11:10 P.M. and 11:35 P.M. sworn members of the Mt. Kisco Police Department, including Bubaris, encountered and targeted Rene Perez (for the same reasons referenced in paragraph "10", *supra*) for a reciprocal act of border dumping. In that connection Rene Perez was:

- a. Struck in the abdominal area in connection with an unlawful "frisk" by Mt. Kisco police,
- b. Involuntarily taken into police custody without cause much less probable cause, thereafter,
- c. Forced into Bubaris' assigned police vehicle,
- d. Without authority or permission transported out of Mt. Kisco to a desolate location just inside the geographic boundary of Bedford (near, but just outside the geographic boundary of the Town of North Castle), and, although seriously injured due to the blow to his abdomen and in dire need of emergency medical attention,
- e. Intentionally dumped on the shoulder of Byram Lake Road.

12. Shortly thereafter his body was discovered by passers-by who, unlike Bubaris and/or Mt. Kisco, called for emergency medical assistance. As a result Rene Perez was removed to a local hospital where shortly thereafter he died - - a death now ruled by the Westchester County Medical Examiner to be a "homicide".

13. As a proximate result of Defendants' policy, practice, custom and conduct Plaintiff has been forced to suffer: the loss of his biological brother; emotional upset; anxiety; fear; and has otherwise been rendered sick and sore.

**AS AND FOR A FIRST CLAIM
AGAINST ALL DEFENDANTS**

14. Repeats and realleges as if fully set forth the allegations of fact contained in paragraphs "1" to "13", inclusive.

15. Under the premises Defendants' intentional and/or reckless conduct, and the causally related death of Rene Perez, violated Plaintiff's rights as guaranteed by the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983.

**AS AND FOR A SECOND CLAIM
AGAINST DEFENDANTS MT. KISCO
AND BUBARIS**

16. Repeats and realleges as if fully set forth the allegations of fact contained in paragraphs "1" to "13", inclusive.

17. Under the premises Defendants' willful and/or reckless indifference to Rene Perez' dire medical condition and his need for emergency medical assistance proximately resulted in his death and the concomitant violation of Plaintiff's rights as guaranteed by reason of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983.

WHEREFORE a judgment is respectfully requested:

- a. Awarding as against Bedford and Mt. Kisco such compensatory damages as the jury may determine,

- b. Awarding as against Bubaris such compensatory and punitive damages as the jury may impose,
- c. Awarding as against all Defendants reasonable attorney's fees and costs,
- d. Declaring unconstitutional and permanently enjoining border dumping by Bedford and Mt. Kisco, and,
- e. Granting such other and further relief as to the Court seems just and proper.

Dated: White Plains, N.Y.
May 24, 2007

LOVETT & GOULD, LLP

By: 

Jonathan Lovett (4854)

Attorneys for Plaintiff

222 Bloomingdale Road

White Plains, N.Y. 10605

914-428-8401

EXHIBIT “B”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANIBAL ESTEBAN JAVIER PEREZ,

07 Civ. 4063 (CLB)

Plaintiffs,

NOTICE OF MOTION

-against-

TOWN OF BEDFORD, TOWN/VILLAGE OF MT.
KISCO and GEORGE BUBARIS, individually,

Defendants.
-----X

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Steven C. Stern and the exhibits annexed thereto; the Memorandum of Law in Support of Defendant's Motion to Dismiss; and upon all pleadings and proceedings heretofore had herein, defendant Town of Bedford, by its attorneys, Miranda Sokoloff Sambursky Slone Verveniotes LLP, will move this Court before Honorable Charles L. Brieant, United States District Judge, in the United States District Court for the Southern District of New York, located at the U.S. Courthouse, 300 Quarropas Street, Room 218, White Plains, New York 10601, on **September 21, 2007 at 10:00 AM**, for an Order, pursuant to Fed. R. Civ. P. 12(c), dismissing this action in its entirety, and for such other and further relief as this Court deems proper and just.

PLEASE TAKE FURTHER NOTICE that opposition papers are to be served at least five (5) days prior to the return date of the motion.

DATED: Mineola, New York
August 23, 2007

MIRANDA SOKOLOFF SAMBURSKY
SLONE VERVENIOTIS LLP
Attorneys for Defendants



By: STEVEN C. STERN (SS 2573)
240 Mineola Boulevard
Mineola, New York 11501
(516) 741-7676
Our File No.: 07-414

TO:

LOVETT & GOULD
Attorneys for Plaintiff
Anibal Esteban Perez
222 Bloomingdale Road
White Plains, New York 10605

RUTHERFORD & CHRISTIE
Attorneys for Defendant George Bubaris
300 East 42nd Street
New York, New York 10017

SANTANGELO RANDAZZO & MANGNONE LLP
Attorneys for Defendant Town/Village of Mount Kisco
151 Broadway
Hawthorne, New York 10532

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANIBAL ESTEBAN JAVIER PEREZ,

07 Civ. 4063 (CLB)

Plaintiffs,

**DECLARATION OF
STEVEN C. STERN**

-against-

TOWN OF BEDFORD, TOWN/VILLAGE OF MT.
KISCO and GEORGE BUBARIS, individually,

Defendants.

-----X

STEVEN C. STERN, an attorney duly admitted to practice law in the Southern District Court of New York hereby affirms under the penalties of perjury, the following.

1. I am a partner in the law firm of Miranda Sokoloff Sambursky Slone Verveniots LLP, attorneys of record for defendant Town of Bedford.

2. I submit this declaration in support of defendant Town of Bedford's motion to dismiss this action, pursuant to Fed. R. Civ. P. 12(c).

3. Annexed hereto as Exhibit "A" is a copy of plaintiff's complaint in this action.

4. Annexed hereto as Exhibit "B" is a copy of defendant Town of Bedford's answer in this action.

5. For the reasons set forth in the accompanying memorandum of law, defendant Town of Bedford respectfully submits that its motion to dismiss should be granted and the claims against

the Town of Bedford dismissed in their entirety.

Dated: Mineola, New York
August 23, 2007

A handwritten signature in black ink, appearing to read "Stu C. Stern". The signature is stylized with a large, bold "S" and "C".

STEVEN C. STERN [SS 2573]
Miranda Sokoloff Sambursky
Slone Verveniottis LLP
Attorneys for defendant
TOWN OF BEDFORD
240 Mineola Boulevard
Mineola, New York 11501
(516) 741-7676
Our File No.: 07-277

EXHIBIT “A”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ANIBAL ESTEBAN JAVIER PEREZ,

Plaintiff,

-against-

TOWN OF BEDFORD, TOWN/VILLAGE
OF MT. KISCO, and GEORGE BUBARIS,
individually,

Defendants.
-----x

07 Civ. ()

COMPLAINT

BRIEANT

Jury Trial Demanded

07 CIV. 4063

ORIGINAL

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LLP, for his complaint respectfully states:

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3. Plaintiff ANIBAL ESTEBAN JAVIER PEREZ is a domiciliary of the State of New York and a resident of the Northern Counties. He is a biological brother of Rene Perez who was the victim of an April 28, 2007, homicide.

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6. Defendant GEORGE BUBARIS (hereinafter "Bubaris"), who is sued in his individual and personal capacities only, at all times relevant to this complaint was a Police Officer employed by Mt. Kisco. With respect to the events set forth *infra* Bubaris was on duty and in all respects acting under color of the laws of the State of New York. Prior to the events of April 28, 2007, as set forth *infra*, Bubaris had made public his belief that Rene Perez was a "bad" person whom he (Bubaris) did not like.

THE FACTS

7. Bedford and Mt. Kisco have for a substantial period of time established and maintained a practice, policy and custom quaintly referred to in police parlance as "border dumping".

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- a. Select a target with respect to whom they have developed, by reason of prior interactions, personal animus motivated in whole and/or substantial respect by reason of the target's: national origin; skin color; and/or ethnicity,
- b. Involuntarily take the target into police custody without lawful cause, much less probable cause,
- c. Force the target to enter into and remain within a police vehicle,
- d. Without authority or permission of the target, transport the target across the border,
- e. Dump the target and/or his body in the neighboring jurisdiction, and
- f. Return to their own jurisdiction without officially reporting their conduct.

10. On April 28, 2007, between 8:30 P.M. and 8:43 P.M. sworn members of the Bedford Police Department targeted Rene Perez, involuntarily took him into their custody, forced him into a police vehicle, without authority or permission transported him out of Bedford and dumped him at or about Route 117 and Main Street in Mt. Kisco. In

doing so those Police Officers were motivated by animus premised upon the target's national origin, skin color, and/or ethnicity.

11. On April 28, 2007, between 11:10 P.M. and 11:35 P.M. sworn members of the Mt. Kisco Police Department, including Bubaris, encountered and targeted Rene Perez (for the same reasons referenced in paragraph "10", *supra*) for a reciprocal act of border dumping. In that connection Rene Perez was:

- a. Struck in the abdominal area in connection with an unlawful "frisk" by Mt. Kisco police,
- b. Involuntarily taken into police custody without cause much less probable cause, thereafter,
- c. Forced into Bubaris' assigned police vehicle,
- d. Without authority or permission transported out of Mt. Kisco to a desolate location just inside the geographic boundary of Bedford (near, but just outside the geographic boundary of the Town of North Castle), and, although seriously injured due to the blow to his abdomen and in dire need of emergency medical attention,
- e. Intentionally dumped on the shoulder of Byram Lake Road.

12. Shortly thereafter his body was discovered by passers-by who, unlike Bubaris and/or Mt. Kisco, called for emergency medical assistance. As a result Rene Perez was removed to a local hospital where shortly thereafter he died - - a death now ruled by the Westchester County Medical Examiner to be a "homicide".

13. As a proximate result of Defendants' policy, practice, custom and conduct Plaintiff has been forced to suffer: the loss of his biological brother; emotional upset; anxiety; fear; and has otherwise been rendered sick and sore.

**AS AND FOR A FIRST CLAIM
AGAINST ALL DEFENDANTS**

14. Repeats and realleges as if fully set forth the allegations of fact contained in paragraphs "1" to "13", inclusive.

15. Under the premises Defendants' intentional and/or reckless conduct, and the causally related death of Rene Perez, violated Plaintiff's rights as guaranteed by the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983.

**AS AND FOR A SECOND CLAIM
AGAINST DEFENDANTS MT. KISCO
AND BUBARIS**

16. Repeats and realleges as if fully set forth the allegations of fact contained in paragraphs "1" to "13", inclusive.

17. Under the premises Defendants' willful and/or reckless indifference to Rene Perez' dire medical condition and his need for emergency medical assistance proximately resulted in his death and the concomitant violation of Plaintiff's rights as guaranteed by reason of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983.

WHEREFORE a judgment is respectfully requested:

- a. Awarding as against Bedford and Mt. Kisco such compensatory damages as the jury may determine,

- b. Awarding as against Bubaris such compensatory and punitive damages as the jury may impose,
- c. Awarding as against all Defendants reasonable attorney's fees and costs,
- d. Declaring unconstitutional and permanently enjoining border dumping by Bedford and Mt. Kisco, and,
- e. Granting such other and further relief as to the Court seems just and proper.

Dated: White Plains, N.Y.
May 24, 2007

LOVETT & GOULD, LLP

By: 

Jonathan Lovett (4854)

Attorneys for Plaintiff

222 Bloomingdale Road

White Plains, N.Y. 10605

914-428-8401

EXHIBIT “B”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ANSWER

ANIBAL ESTEBAN JAVIER PEREZ,

Plaintiff,

07 Civ. 4063 (CLB)

-against-

TOWN OF BEDFORD, TOWN/VILLAGE OF MOUNT
KISCO and GEORGE BUBARIS, individually,
Defendants.

-----X

For the reasons stated in paragraph 1 of the complaint, defendant

defendant TOWN/VILLAGE OF MOUNT KISCO, by its attorneys, SANTANGELO

RANDAZZO & MANGONE LLP, say:

NATURE OF ACTION

1. The allegations contained in paragraph "1" of the complaint constitute conclusions of law to which defendant makes no answer except to demand strict proof thereof and respectfully refers any and all questions of law to this Honorable Court. Further, defendant denies any conduct giving rise to a cause of action pursuant to enumerated statutes.

JURISDICTION

2. The allegations contained in paragraph "2" of the complaint constitute conclusions of law to which defendant makes no answer except to demand strict proof thereof and respectfully refers any and all questions of law to this Honorable Court.

THE PARTIES

3. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "3" of plaintiff's complaint.

4. Defendant admits the allegations contained in paragraph "4" of the

plaintiff's complaint.

5. Defendant admits the allegations contained in paragraph "5" of the plaintiff's complaint.

6. Defendant admits the allegations contained in paragraph "6" of the plaintiff's complaint that defendant George Bubaris was a police officer employed by the Village of Mt. Kisco but denies that prior to the events of April 28, 2007, Bubaris had made public his belief that Rene Perez was a "bad" person whom he (Bubaris) did not like and refers all other questions of law to this Honorable Court.

THE FACTS

7. Defendant denies the allegations contained in paragraph "7" of the plaintiff's complaint.

8. Defendant denies the allegations contained in paragraph "8" of the plaintiff's complaint.

9. Defendant denies the allegations contained in paragraph "9" of the plaintiff's complaint.

10. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "10" of plaintiff's complaint.

11. Defendant denies the allegations contained in paragraph "11" of the plaintiff's complaint.

12. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "12" of plaintiff's complaint.

13. Defendant denies the allegations contained in paragraph "13" of the plaintiff's complaint.

ANSWERING A FIRST CLAIM

14. Defendant repeats, reiterates and realleges each and every answer contained in Paragraphs 1-13 of this Answer with the same force and effect as if set forth more fully at length herein.

15. Defendant denies the allegations contained in paragraph "15" of the plaintiff's complaint.

ANSWERING A SECOND CLAIM

16. Defendant repeats, reiterates and realleges each and every answer contained in Paragraphs 1-13 of this Answer with the same force and effect as if set forth more fully at length herein.

17. Defendant denies the allegations contained in paragraph "17" of the plaintiff's complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. Any conduct which is alleged by plaintiff is *de minimis* and insubstantial and as such the allegations fail to establish a claim upon which relief under 42 U.S.C. Section 1983.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. Any harm which came to Rene Perez was a direct and proximate result of his own actions.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. The plaintiff's claim for damages, if any, are to be strictly governed by the Civil Rights Act of 1991 (42 U.S.C. Section 1981a).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

21. Plaintiff has failed to allege that any harm which they may have suffered occurred as a result of a policy and/or custom established by the Town/Village of Mount Kisco, and thus the action against the Town/Village must be dismissed.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

22. Insofar as plaintiff seeks to impose liability to defendant Town/Village of Mount Kisco simply because it is alleged to have employed one or more constitutional tortfeasors, this action should be dismissed since the doctrine of *respondeat superior* is not available in an action brought pursuant to 42 U.S.C. Section 1983.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

23. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

24. Plaintiff lacks standing to assert any Section 1983 claims on behalf of his brother.

W H E R E F O R E, the defendant prays judgment that the complaint of the plaintiff be dismissed, together with the costs and disbursements of this action and attorney's fees awarded to defendant.

Dated: Hawthorne, New York
July 13, 2007

Yours, etc.,

SANTANGELO RANDAZZO & MANGONE LLP

By: 

James A. Randazzo(0156)

Attorneys for Defendants-Town/Village of

151 Broadway
Hawthorne, New York 10532
(914) 741-2929

TO: LOVETT & GOULD, LLP
Attorneys for Plaintiff
222 Bloomingdale Road
White Plains, New York 10605
(914) 428-8401

MIRANDA, SOKOLOFF, SAMBURSKY, SLONE & VERVENIOTIS LLP
Attorneys for Defendant-Town of Bedford
240 Mineola Boulevard
The Esposito Building
Mineola, New York 11501
(516) 741-7676

RUTHERFORD & CHRISTIE
Attorneys for Defendant-George Bubaris
300 East 42nd Street
18th Floor
New York, New York 10017
(212) 599-5799